

**STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS
FOR EMBALMERS AND FUNERAL DIRECTORS**

Valerie Jones, Embalmer
License No.: 002452

Petition No.: 2002-0827-030-022

MEMORANDUM OF DECISION

Procedural Background

On October 26, 2004, the Department of Public Health ("the Department") presented the Connecticut Board of Examiners for Embalmers and Funeral Directors ("the Board") with a Statement of Charges ("the Charges") brought against license number 002452 of Valerie Jones ("respondent"). Board Exh. A. The Charges, and Notice of Hearing, were sent to respondent via certified mail, return receipt requested, and first class mail, on December 6, 2004. Board Exh. A.

On April 28, 2005, respondent filed an Answer to the Charges. Board Exh. F.

On May 10, 2005, a hearing was held regarding the allegations contained in the Charges. Respondent appeared and was represented by Attorney Gregory Harris of Middletown, Connecticut. Attorney Ellen Shanley represented the Department.

The Board conducted the hearing in accordance with *Conn. Gen. Stat.* Chapter 54 and the Regulations of Connecticut State Agencies ("the Regulations") § 19a-9a-1 *et seq.* All Board members involved in this decision received copies of the entire record and attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

Allegations

1. In paragraph 1 of the Charges, the Department alleges respondent, of Waterbury, Connecticut, is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license number 002452.
2. In paragraph 2 of the Charges, the Department alleges that in August 2002, respondent was an owner and manager of Chapel Memorial Funeral Home ("Chapel Memorial") in Waterbury, Connecticut, and provided funeral services and merchandise to decedent Christine Payne ("decedent") and decedent's daughter, Michelle Payne.

3. In paragraph 3 of the Charges, the Department alleges that Christine Payne died in New Haven, Connecticut on August 15, 2002. Her daughter, Michelle Payne was in Texas at the time.
4. In paragraph 4 of the Charges, the Department alleges that on August 15, 2002, Michelle Payne agreed to have Chapel Memorial handle the arrangements for decedent. Respondent did not discuss embalming or viewing with Michelle Payne during the initial telephone contact(s). Respondent was aware that Ms. Payne was in Texas and would be returning for her mother's funeral.
5. In paragraph 5 of the Charges, the Department alleges that removal of decedent, to Chapel Memorial occurred on August 16, 2002, and that Chapel Memorial did not have a refrigeration unit.
6. In paragraph 6 of the Charges, the Department alleges that Michelle Payne arrived in Connecticut on August 18, 2002.
7. In paragraph 7 of the Charges, the Department alleges that on August 18, 2002, respondent advised petitioner against embalming decedent because of deterioration.
8. In paragraph 8 of the Charges, the Department alleges that on August 19, 2002, respondent and Michelle Payne met to discuss decedent's funeral arrangements. Michelle Payne was not given the itemized price list of Chapel Memorial, respondent's employer, prior to respondent discussing decedent's funeral arrangements with her.
9. In paragraph 9 of the Charges, the Department alleges that during August 2002, respondent improperly charged for "cash advance" items for decedent's funeral arrangements, by billing decedent and/or decedent's daughter more than the net amount paid by Chapel Memorial for such items.
10. In paragraph 10 of the Charges, the Department alleges that during August 2002, respondent charged for services in conjunction with decedent's funeral arrangements that were not listed on the itemized price list of all available services and merchandise.
11. In paragraph 11 of the Charges, the Department alleges that during August 2002, respondent improperly charged sales tax on the casket and merchandise provided to decedent.
12. In paragraph 12 of the Charges, the Department alleges that during August 2002, respondent utilized an unlicensed person to represent Chapel Memorial during the church service for decedent's un-embalmed remains.
13. In paragraph 13 of the Charges, the Department alleges that during August 2002, respondent utilized an unlicensed person to transport decedent's un-embalmed remains during the funeral procession.

14. In paragraph 14 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut § 20-227, including but not limited to:
 - a. § 20-227(2);
 - b. § 20-227(4);
 - c. § 20-227(5); and/or,
 - d. § 20-212.

Findings of Fact

1. Respondent of Waterbury, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut embalmer license no. 002452. Board Exh. F.
2. In August 2002, respondent was the owner and manager of Chapel Memorial, and provided funeral services and merchandise to decedent and decedent's daughter, Michelle Payne. Board Exh. F.
3. Christine Payne died in New Haven, Connecticut on August 15, 2002. Her daughter Michelle Payne was in Texas at that time. Board Exh. F.
4. The evidence is insufficient to establish that on August 15, 2002, Michelle Payne agreed to have Chapel Memorial handle the arrangements for decedent.
5. The evidence is insufficient to establish that on August 15, 2002, respondent did not discuss embalming or viewing with Michelle Payne during their initial telephone conversations.
6. Respondent was aware that Michelle Payne was in Texas on August 15, 2002, and would be returning for her mother's funeral. Board Exh. F.
7. Decedent was transferred to Chapel Memorial on August 16, 2002. Chapel Memorial did not have a refrigeration unit on August 16, 2002. Board Exh. F.
8. Michelle Payne arrived in Connecticut on August 18, 2002. Board Exh. F.
9. On August 18, 2002, Michelle Payne met with respondent and respondent advised Michelle Payne against embalming decedent. There is insufficient evidence to determine respondent's rationale for making a recommendation to Michelle Payne against embalming of decedent. Board Exh. F; Tr., p. 23.
10. On August 19, 2002, respondent and Michelle Payne met to discuss decedent's funeral arrangements. Dept. Exhs. 1, 2.
11. On August 19, 2002, Michelle Payne received the itemized price list of Chapel Memorial, but there is insufficient evidence to establish that the price list was not provided to

Michelle Payne prior to discussing decedent's funeral arrangements, as alleged. Dept. Exh. 1, 2.

12. During 2002, respondent improperly charged for "cash advance" items for decedent's funeral arrangements, by billing decedent and/or decedent's daughter more than the net amount paid by Chapel Memorial for such items. Specifically, respondent charged an estimated amount for placing an obituary in the newspaper, as opposed to the actual amount, which resulted in an overcharge of approximately \$20. Tr., pp. 16, 17, 22.
13. During August 2002, respondent charged for services in conjunction with decedent's funeral arrangements that were not listed on the itemized price list of all available services and merchandise. Specifically, a charge of \$500 for equipment and staff was not itemized to reflect that the \$500 was actually a charge of \$250 for the calling hour and \$250 for a funeral. Also, the itemized price list failed to reflect a charge for the limousine. Dept. Exhs. 2, 3; Tr. pp. 23, 24.
14. During August 2002, respondent improperly charged sales tax on the casket and merchandise provided to Christine Payne. Board Exh. F.
15. During August 2002, respondent utilized an unlicensed person to represent Chapel Memorial during the church service for decedent's un-embalmed remains. Board Exh. F; Tr., p. 24.
16. During August 2002, respondent utilized an unlicensed person to transport decedent's unembalmed remains during the funeral procession. Board Exh. F; Tr., pp. 24, 25.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, 67 L. Ed. 2d 69, *reh'g denied*, 451 U.S. 933, 101 S. Ct. 2008, 68 L. Ed. 2d 318 (1981); *Swiller v. Commissioner of Public Health*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. 705601 (October 5, 1995, Hodgson, J.).

The Board relied on the training and experience of its members in making its findings of facts and conclusions of law. *Pet v. Department of Health Services*, 228 Conn. 651, 667 (1994).

Connecticut General Statutes § 20-227 provides in pertinent part:

The Board may take any of the actions set forth in section 19a-17 against a licensee . . . if it finds the existence of any of the following grounds: . . . (2) violation of the statutes or regulations of said department relative to the business of embalming of funeral directing in this state; . . . (4) incompetency, negligence or misconduct in the carrying on of such business or profession; . . . (5) violation

of or noncompliance with the provisions of this chapter or the rules established hereunder. . . .

The Board finds that the Department met its burden of proof with regard to allegations 1 through 3, 5, 6, and 9 through 14, but failed to meet its burden of proof with regard to allegations 4, 7 and 8.

Respondent admits paragraphs 1 and 2, which allege that respondent is a licensed embalmer who owns and manages Chapel Memorial. Respondent also admits paragraph 3 and the last sentence of paragraph 4, which alleges respondent's business relationship with decedent and Michelle Payne. Thus, the Department met its burden of proof relative to these allegations.

With regard to the first two sentences of paragraph 4 of the Charges, the Department failed to prove by a preponderance of the evidence that on August 15, 2002, Michelle Payne agreed to have Chapel Memorial handle the funeral arrangements for her mother, or that respondent failed to discuss embalming or viewing with Ms. Payne during the initial telephone contact(s). The record is void of any evidence of a signed contract on August 15, 2002 or any initial telephone contacts between Ms. Payne and respondent. Respondent does admit however, that she was aware that Ms. Payne was in Texas on August 15, 2002 and that she would be returning for her mother's funeral.

With regard to paragraphs 5 and 6, respondent admits that on August 16, 2002, decedent was removed to Chapel Memorial, and at such time Chapel Memorial did not have a refrigeration unit. Respondent also admits that Michelle Payne arrived in Connecticut on August 18, 2002. Thus, the Department met its burden of proof relative to these allegations.

With regard to paragraph 7, the Department claims that on August 18, 2002, respondent advised Michelle Payne against embalming decedent because of deterioration. Although respondent admits she advised Michelle Payne against embalming decedent, there is insufficient evidence to establish that respondent made this recommendation due to decedent's deterioration. Thus, the Department failed to meet its burden of proof.

With regard to paragraph 8 of the Charges, a preponderance of the evidence establishes that respondent met with Michelle Payne on August 19, 2002. A preponderance of the evidence also establishes that Michelle Payne received the itemized price list. However, there is insufficient evidence to establish that Michelle Payne did not receive the itemized price list *prior*

to discussing the funeral arrangements or entering into a sales agreement with respondent as alleged.

With regard to paragraph 9, the Department met its burden of proving that during August 2002, respondent improperly charged for “cash advance” items for decedent’s funeral arrangements, by billing decedent and/or decedent’s daughter more than the amount paid by Chapel Memorial for such items. As revealed in the record, respondent charged Michelle Payne an estimated amount to run an obituary in the newspaper, as opposed to the amount actually paid by Chapel Memorial to the newspaper, thereby overcharging respondent by approximately \$20. Respondent does not dispute this finding. Thus, respondent billed Michelle Payne an amount other than the net amount paid by Chapel Memorial for the obituary, a cash advanced item, in violation of § 20-230b of the General Statutes.¹

With regard to paragraph 10, the Department met its burden of proving that during August 2002, respondent charged for services in conjunction with decedent’s funeral arrangements that were not listed on the itemized price list of all available services and merchandise. The Department entered the Statement of Funeral Goods and Services Selected into the record, which revealed a \$500 charge for “use of equipment and staff for church services.” Based on respondent’s testimony, such \$500 charge was to cover the cost of the funeral for \$250 and calling hours for \$250. However, the Statement of Funeral Goods and Services Selected fails to reflect this itemization, thereby failing to provide Michelle Payne adequate notice of her charges in violation of § 20-230b.

With regard to paragraph 11, respondent admitted the allegation that she improperly charged sales tax on the casket and merchandise. The record reflects that the respondent charged and collected a sales tax, a cash advanced item, on the decedent’s casket, which was exempt

¹ Connecticut General Statutes § 20-230b provides:

No person engaged in the business of funeral directing and no licensed funeral director or licensed embalmer shall fail to provide the person making funeral arrangements or arranging for disposition of a dead human body, at the time funeral arrangements are completed and prior to the time of rendering service or providing merchandise, a written statement indicating to the extent then known: (1) The price of the service that the person has selected and what is included therein; (2) the price of each supplemental item of service or merchandise requested; (3) the amount involved for each of the items for which the funeral firm will advance money as an accommodation to the family of the deceased; and (4) the methods of payment. No . . . licensed embalmer shall bill or cause to be billed any item that is referred to as a “cash advanced” item unless the net amount paid for such item by the funeral firm is the same as is billed by the funeral firm.

from sales tax. (Tr., pp. 14-15.) In doing so, respondent violated § 20-230b of the General Statutes.

With regard to paragraphs 12 and 13 of the Charges, respondent admitted the allegations that she used an unlicensed person during the church service and to transport decedent's unembalmed remains, all in violation of § 20-212 of the Statutes, which provides in pertinent part, that:

[N]o person . . . shall enter, engage in, carry on or manage for another the business of caring for, preserving or disposing of dead human bodies until each person . . . so engaged has obtained from the Department of Public Health and holds a license as provided in this chapter . . . except that once a dead human body has been prepared in accordance with the Public Health Code and the applicable provisions of the general statutes, an embalmer or funeral director licensed in this state may authorize an unlicensed employee to transport such body.

The Board finds that a preponderance of the evidence establishes that pursuant to § 20-227(2) and (5) of the Statutes, the Board has the authority to take action against respondent's license in accordance with § 19a-17 of the Statutes based upon respondent's violations of §§ 20-230b and 20-212 of the Statutes. Based on the record in this case, the Board does not find respondent's conduct rose to the level of "incompetency, negligence or misconduct in the carrying on of such business or profession" in violation of § 20-227(4) of the Statutes, and bases this order only on violations of §§ 20-227(2) and (5) of the Statutes.

Respondent explains that although she engaged in the conduct set forth in allegations numbered 11, 12, 13 of the charges, her actions are mitigated by several factors. First, with regard to allegation 11 of the Charges, respondent improperly charged sales tax upon the advice of her accountant. With regard to paragraphs 12 and 13 of the Charges, respondent contends that her use of an unlicensed person to perform activities requiring a license was "an isolated oversight, not a practice." The Board finds the respondent's explanations credible and has taken into account these factors in determining a penalty in this matter.

Order

Pursuant to the authority vested in it by §§ 19a-17 and 20-227 of the Statutes, the Board orders the following in the case of Valerie Jones:

Respondent is hereby reprimanded.

Connecticut Board of Examiners for Embalmers,
Funeral Directors

4-11-06
Date

Celia Pinzi
Celia Pinzi, Chairperson

4-11-06
Date

Daniel P. Jowdy
Daniel Jowdy, Board Member

4-11-06
Date

Peter V. Hansen
Peter Hansen, Board Member

4-11-06
Date

James W. Donohue
James Donohue, Board Member